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August 6, 2021

Via ECF

Honorable Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: Sanchez et al. v. Art +1, Inc. et al. - 20-cv-05623 (ER)

Dear Judge Netburn:

Our firm represents Defendants, Art + 1, Inc. and Mr. Artan Maksuti in the above referenced matter. We write pursuant to your Honor's June 21, 2021 Order (Dkt # 73), which directed the parties to file a status letter regarding discovery – including a discussion of outstanding discovery disputes (if any) – and to reaffirm the parties' commitment to a settlement conference, originally scheduled for September 10, 2021 but for reasons explained herein Defendants request a postponement to September 20, 2021, or another date when Your Honor is available. For the Court's convenience, we include a summary of completed discovery and the timeframes of completion as part of this Status Letter.

Discovery as of August 6th, 2021:

Document Production and Interrogatories:

On April 19, 2021, Defendants served Plaintiffs with responses to Plaintiffs' First Set of Interrogatories, and with document production in response to Plaintiffs' First Request For Production of Documents. One week later, Plaintiffs served their responses to Defendants' First Request For Production of Documents and Defendants' First Set of Interrogatories, in which Plaintiffs all but uniformly objected to each of Defendants' Interrogatories, citing Rule 33.3 to avoid responding and all but uniformly responded to Defendants' document requests by stating that "Plaintiffs are not in possession of responsive documents." Defendants objected to Plaintiffs use of Rule 33.3 and requested responses from Defendants' counsel as well as responsive documents, but have received neither.

Thereafter, Defendants solely paid for the originally proposed notices to Class Members prepared by Plaintiffs' counsel, originally sent on April 15, 2021, covering Class Members for the period September 22, 2017 through September 22, 2020 to be sent through a third-party administrator. Only two weeks prior to the original FLSA Collective Action Opt-in deadline of May 31, 2021, Plaintiffs' counsel requested the notices originally prepared by Plaintiffs' counsel be resent to every class member in Spanish. Plaintiffs did not offer to pay for the second mailing, and despite Defendants' request to Judge Ramos that Plaintiffs pay for the additional mailing, the Court ordered, and Defendants paid for, the second mailing in Spanish, which was first sent to all class members on June 1, 2021 and was completed on July 15, 2021. Despite the almost eleven (11) weeks of Notices sent twice to the class members, that duplicative effort yielded only three additional opt-in Plaintiffs (Antonio Salazar, Alfonso Enrique Mora Huerta, and Andreas Escobar).

On May 28, 2021, June 8, 2021, and July 14, 2021, Plaintiffs served their Second, Third, and Fourth Requests for Production of Documents, respectively (one for each of the three opt-in class members) from June and July, 2021, with responses originally due on July 23, 2021. The Parties agreed to a one-week deadline extension, and Defendants served their responses to Plaintiffs' Second, Third, and Fourth Document Production Requests, and served additional responsive documents to Plaintiffs, on July 30, 2021, in line with the Court's Order approving Defendants' unopposed request for a one-week extension to serve Class Member Discovery (Dkt #78, Dkt #79).

On July 30, 2021, Defendants further served all remaining Class Member Discovery, including a Supplemental Response to Plaintiff's Request For Production of Documents that included additional documents dating back to cover Defendants' potential class members/construction workers from September 22, 2014 through September 22, 2017 (in addition again made available to Plaintiffs the prior 9/22/2017 – 9/22/2020 production period for which Defendants had previously provided documents responsive to Plaintiffs' Document Production Requests). Defendants further included supplemental documents in response to Plaintiffs' July 2021 email inquiry about copies of checks for certain weeks within the 2018 through 2020 time period. The parties have further completed their Rule 26 Initial Disclosure Statements and provided them to one another.

FLSA Collective Action Opt-In Notification Process Completed:

As part of the discovery in this matter, Defendants and Plaintiffs proposed, and the Court approved, a joint FLSA Collective Action Notice and Opt-In Consent Form in March 2021 that was finalized and mailed out for a six-week opt-in period from April 15, 2021 through June 1, 2021. Two weeks before the deadline for completing the FLSA Collective Action Opt-In Period, Plaintiffs Requested, and were granted, permission to resend a Spanish translation of the FLSA Collective Action Notice Consent to Join form, which was re-mailed to the potential class on June 1, 2021, with a Consent-to-Join Deadline of July 15, 2021. Defendants hired – at their own expense – a Third Party Administrator who oversaw both of the FLSA Collective Action Opt-In Notices and Consent to Join mass mailings, receipt / tracking of Opt-Ins, and notification process. The Defendants further agreed to Plaintiff's Stipulation of Dismissal Without Prejudice, as related to the claims of Named Plaintiff Allan Ford, who passed away in the spring of 2021.

Remaining Discovery: Depositions, Requests to Admit and Settlement:

Defendants and Plaintiffs' counsel have been conferring about depositions since late June, 2021. Defendants have confirmed the availability of all five persons whom Plaintiffs have noticed to

be deposed during the weeks of August 9, 2021 and August 16, 2021 (including the main defendant, Mr. Artan Maksuti). The fifth requested witness that Plaintiff seeks to depose is a private third-party, not an employee of the Defendant, nor a party to this action but has agreed to be available for the Noticed date of August 12, 2021, as requested by Plaintiffs. Defendants agreed to have witnesses appear for Plaintiffs' requested depositions, without the need for a formal subpoena. Plaintiffs, in turn, agreed to produce their six named Plaintiffs, beginning on August 16, 2021 with Jhon Vinas and Salvador Sanchez, as requested by Defendants, and have agreed to produce both the other four named plaintiffs and at least two of the three opt-in Class Members. The third opt-in Class Member's deposition, Plaintiff Antonio Salazar, is expected to be set for a date during August 2021. Given the September 3, 2021 deposition deadline in Your Honor's June 8, 2021 Order, which directed the parties to follow the Court's prior Civil Conference Order of May 28, 2021, Defendants seek to complete all such depositions during August 2021, and Plaintiffs' counsel has provided dates to conduct those depositions by August 26, 2021.

The parties have had discussions this week about changing the depositions from live/in-person to remote depositions via Zoom, in light of recent trends with the Delta variant of Covid-19, and both Plaintiffs and Defendants agree to using Zoom to conduct all depositions.

Requests to Admit and final Interrogatories are not due until September 17, 2021. Defendants will again pursue the documents and responses not yet provided by Plaintiffs included in Defendants' First Set of Interrogatories and Discovery Requests, in addition to documents and responses to their respective final requests of Plaintiffs, no later than September 17, 2021.

The Defendants' Reaffirmation of Commitment to The Court's Scheduled September 10, 2021 Settlement Conference:

The Defendants reaffirm their commitment to participate actively with the Court Ordered Settlement Conference, but respectfully request that the original date be advanced from September 10, 2021 to September 20, 2021, or another date that Your Honor is available, given the Labor Day weekend and the Jewish High Holidays in early through mid-September. While the parties have had prior settlement negotiations in this matter, Defendants' counsel commits to continuing in good faith settlement discussions with Plaintiffs' counsel prior to the September 20, 2021 Settlement Conference, or another date on which Your Honor is available. Defendants will file any required *Ex-Parte Settlement Letters and Acknowledgment Forms*, by Monday, September 13, 2021, if Your Honor will adjust the Court's Settlement Conference Order (Dkt #74).

We thank Your Honor for your attention to the within Status Letter and Reaffirmed Commitment to the Settlement Conference of September 20, 2021 or another date that Your Honor is available. Should you require any additional information or clarification from Defendants, we will readily provide same to the Court.

Respectfully Submitted,

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